TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 336

UNITED STATES OF AMERICA EX REL. COSTAS CATECHES, PETITIONER,

vs.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 7, 1930

CERTIORARI GRANTED OCTOBER 13, 1930

(35,258)

(35,258)

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel. COSTAS CATECHES, Relator-Appellant,

vs.

BENJAMIN M. DAY, United States Commissioner of Immigration, Respondent-Appellee

STATEMENT

This proceeding was commenced on September 9th, 1929 by the filing of a petition and the issuance of a Writ of Habeas Corpus by Honorable Francis G. Caffey, United States District Judge.

Respondent filed its return and the matter was argued in open court on September 17th, 1929 before Honorable Francis G. Caffey, United States District Judge.

On September 18th, 1929 an order was made by Honorable Francis G. Caffey, U. S. D. J., dismissing the writ of habeas corpus without opinion.

On September 19th an order was made by Honorable Francis Caffey, U. S. D. J., allowing the present appeal to the Honorable Court and the relator was released on bail in the sum of One Thousand ($1,000) Dollars pending said appeal.

There has been no change of parties or attorneys since the commencement of the proceedings.

[fol. 2] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. COSTAS CATECHES, Relator,

vs.

BENJAMIN M. DAY, United States Commissioner of Immigration, Respondent

WRIT OF HABEAS CORPUS

The President of the United States of America to Benjamin M. Day, United States Commissioner of Immigration, Ellis Island, New York, and/or to whomsoever else may have custody and charge of the body of the above-named alien, Greetings:

The body of Costas Cateches, by you illegally detained and imprisoned, it is said, have you before the District Court of the United States in and for the Southern District of New York at Room 235, U. S. Post Office and Federal Courts Building, New York, at 10:30 o'clock in the forenoon on the 17th day of September 1929, together with the cause of his detention, to undergo and receive what this Court may deem fit and proper in the premises, and have you then and there this writ.

Witness Honorable John C. Knox, Judge of the District Court of the United States in and for the Southern Dis-[fol. 3] trict of New York, this 9th day of September, in the year of our Lord nineteen hundred twenty-nine, and of the Independence of the United States of America the one hundred fifty-fourth.

Alex. Gilchrist, Jr., Clerk of the District Court of the United States, Southern District of New York.

Writ allowed Sept. 9, 1929.

Francis G. Caffey, U. S. D. J. (Seal.)

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Judge of the United States District Court, Southern District of New York:

Your relator, Costas Cateches for his petition for a writ of Habeas Corpus, respectfully shows:

That he is of the Greek race, is a seaman, and entered the United States at Boston, Massachusetts, as a member of the crew of an Italian Steamship, in October 1925.

That early on May 6th, 1929, relator was arrested by the United States Immigration Authorities, and that thereafter deportation proceedings and hearings were conducted by the United States Immigration Authorities at Ellis Island, New York.

Relator respectfully alleges that he being a seaman, and having been arrested more than three years after his entry into the United States, the Immigration Authorities are estopped from deporting him by reason of the provision of Section 34 of the Immigration Act of 1917.

[fol. 5] That the Secretary of Labor has issued a Warrant for relator's deportation on the S/S "Saturnia", sailing September 10th, 1929, and relator is now in the custody of the respondent at Ellis Island, New York, within the jurisdiction of this Honorable Court pending such deportation.

Relator respectfully alleges that all of the acts of the Immigration Authorities and of the Secretary of Labor herein, are contrary to law, and that he is now illegally detained, imprisoned, and restrained of his liberty without due process of law.

Wherefore he respectfully prays that a writ of habeas corpus issue herein requiring the respondent to produce him together with the cause of his detention before this Honorable Court in order that the legality of said detention may be inquired into.

Kostas Catechy.

[fol. 6] *Duly sworn to by Costas Cateches. Jurat omitted in printing.*

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS, WITH TESTIMONY AND EXHIBITS

SOUTHERN DISTRICT OF NEW YORK, ss:

Joseph Savoretti, being duly sworn, says that he is and during all the times herein mentioned has been clerk in the service of the United States; that he is attached to the Law Department of the Immigration Service of the United States at Ellis Island, New York; that he in his official capacity is authorized to make and in behalf of the respondent hereby makes the following return to the writ of habeas corpus herein.

In compliance with the direction of this Court, the body of the said alien in his own proper person was produced herewith before this Court at the time specified in the writ.

It is respectfully urged that upon its face the petition upon which the writ was granted is insufficient in law, and that the writ should therefore be quashed because

(a) The petition does not allege facts to show that the proceedings of the Department of Labor upon which was [fol. 8] issued the warrant of deportation pursuant to which the said alien was held, were not regular, fair and in compliance with the statute applicable in such cases, nor facts from which this Court can determine that the proceedings were either irregular, unfair or not in compliance with said statute;

(b) The petition does not allege any facts which entitled this Court to review the findings and conclusions of the Department of Labor upon which the warrant of deportation was issued;

(c) It is not alleged that there was no evidence before the Department of Labor upon which it based or could have based its findings and conclusion in accordance with which the warrant of deportation was issued;

(d) It does not appear by allegation of facts that the issues sought by the petition now to be litigated in this

Court have not already been determined by the Department of Labor adversely to the said alien in proceedings which were regular, fair and in compliance with the statute applicable thereto.

As appears by the records of the Department of Labor of the United States with respect to the above-named alien, copies of which are produced and filed herewith as part of this return.

1. The relator entered the United States at the Port of Boston, Mass. on or about October 15, 1925, via an unknown ship. He had been employed as a seaman on this vessel and upon his arrival at the Port of Boston, Mass. on or about October 15, 1925, he deserted the ship and has re- [fol. 9] mained in this country ever since. On May 8, 1929 the alien was served with a warrant of arrest dated May 3, 1929. The warrant of arrest charged that the relator had been found in the United States in violation of the Immigration Act of May 26, 1924, for the reason that he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder. The relator admits that he deserted the vessel on which he had been previously engaged immediately upon his entry and that he has since been employed as a stevedore for the Cunard Steamship Company on Pier 54 and 56, New York City, N. Y. The relator was not in possession of an unexpired immigration visa at the time of his landing.

2. As appears from the record the alien was duly informed and apprised of the charges against him. He was afforded a full, complete and fair hearing by the Department of Labor upon the said charges and was afforded a full, complete and fair opportunity to answer and submit evidence upon such charges. There was evidence before the Department of Labor sufficient to sustain the said charges. The Department of Labor duly found that the charges were sustained, that they were in fact fully sustained by the proofs that were before and were considered by the Department of Labor. In any event, it cannot be said on the record herein the Department of Labor abused the discretion vested in it by Congress and its determination was final and conclusive.

3. Deponent denies any knowledge or information sufficient to form a belief as to the truth of the allegations of the relator's petition, except as to the allegations heretofore expressly admitted.

[fol. 10] Wherefore deponent prays that the writ of habeas corpus herein be dismissed and the said alien be remanded to the custody of the Commissioner of Immigration at Ellis Island, New York.

Joseph Savoretti.

Sworn to before me this 17th day of September, 1929. Richard L. Baltimore, Notary Public. Notary Public, New York Co., No. 33. New York Co. Register's No. —. Commission expires March 30, 1931. (Seal.)

[fol. 11] U. S. Department of Labor, Immigration Service, Ellis Island

99149/291

May 2, 1929.

The undersigned respectfully recommends that the Secretary of Labor issue his warrant for the arrest of Kostas Cateches, nat. of Greece deserted an unknown ship at the port of New York Sept. 1926, the alien named in the attached certificate, upon the following facts which the undersigned has carefully investigated, and which, to the best of his knowledge and belief, are true:

(1) (Here state fully facts which show alien to be unlawfully in the United States. Give sources of information, and, where possible, secure from informants and forward with this application duly verified affidavits setting forth the facts within the knowledge of the informants. Application for a warrant based on conviction for a crime committed in the United States should be accompanied by a copy of the alien's commitment obtained from the warden of the institution wherein he is confined, or a certificate of conviction obtained from the clerk of the court wherein sentence was pronounced.) Remained longer. From the enclosed report of Inspector Hanney, it appears that the

above named alien is in the U. S., in violation of law, in that he has remained in the U. S. for a longer period than permitted under the Act of May 26, 1924 or regulations made thereunder.

This confirms telegraphic request of even date. Information too indefinite to verify landing at this time.

[fol. 12] (2) The present location and occupation of above-named alien are as follows: 327 W. 17th St., City.

Pursuant to Rule 18 of the Immigration Regulations there is attached hereto and made a part hereof the certificate prescribed in subdivision B of said Rule, as to the landing or entry of said alien, duly signed by the immigration officer in charge at the port through which said alien entered the United States.

(S.) Byron H. Uhl, Assistant Commissioner.

(Copied/cc.)

U. S. Department of Labor, Immigration Service
Office of Commissioner of Immigration, Ellis Island, New York Harbor, N. Y.

May 1, 1929.

In answering refer to No. 99149/291.

Commissioner of Immigration, Ellis Island, N. Y. H.:

Telegraphic warrant of arrest is requested on the grounds, "Remained Longer" in the case of Kostas Cateches, native of Greece, who deserted an unknown vessel at the port of New York, September, 1926. Alien is residing at the present time at 327 West 17th Street, New York City. [fol. 13] One, Nick Argero, residing at 143 8th Avenue, New York City, appeared at this office and swore that this alien deserted an unknown vessel at the port of New York, in September, 1926.

A. E. Hanney, Immigrant Inspector.

AEH:RS.
D 4/29/29.

United States of America, Department of Labor,
Washington

No. 55666/391

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any immigrant inspector in the service of the United States:

Whereas, from evidence submitted to me, it appears that the alien Kostas Cateches, who landed at the port of New York, N. Y., on or about the 15th day of Sept. 1926 has been found in the United States in violation of the immigration act of May 26, 1924, for the following among other reasons:

That he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder;

I, Peter F. Snyder, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. [fol. 14]

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1929". Pending further proceedings the alien may be released from custody under bond in the sum of $500.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 3rd day of May, 1929.

Peter F. Snyder, Assistant to the Secretary of Labor.

U. S. Department of Labor, Immigration Service

Office of the Commissioner of Immigration, Ellis Island, New York Harbor

File No. 99149/291

May 15, 1929.

Commissioner-General of Immigration, Washington, D. C.:

Bureau No. 55666/391.

Name of Alien: Constantinos or Costas Catethes.

Nationality: Greek.

Country to which deportable: Greece.

Charges additional to those contained in warrant: None.

[fol. 15] Whether detained at government expense: No.

Passport Status: Greek passport on file. The assistant of the Bureau will be required.

Comment: Formal application for warrant of arrest with supporting evidence in this case, was mailed to the Bureau under date of May 2, 1929.

Claims entry at Boston, October, 1925, as unknown, crew.

(S.) Benj. M. Day, Commissioner.

AS.
Enc. #17586.
(Copied/cc.)

U. S. Department of Labor, Immigration Service, Ellis Island, N. Y. H.

File No. 99149/291

Record of Hearing Constantinos Catethes or Costas Catethes under Department Warrant of Arrest

No. 55566/391. Dated May 3, 1929

Present for the Government: Inspector A. E. Hanney, Secretary F. B. Nathansen, Interpreter B. Christopher (Greek).

Present for the alien: Alien present in person.

Hearing held at Ellis Island, N. Y. H., on May 8, 1929.

[fol. 16] Alien brought to Ellis Island by: Inspector Hanney.

Date: 9 A. M., May 8, 1929.

Result of medical examination (state finding): Not certified.

Verification of landing: Cannot be verified.

Last Foreign address: Nathrekien-Korkyre (Corfu) Greece.

U. S. Address: 231 W. 40th St., fifth floor, New York City.

Relatives in U. S.: Cousin, Alexandres Kessimie, 427 W. 16th St., N. Y. C.

Passport Status: Greek passport on file at Ellis Island.

Description: 5' 2", 125 lbs., dark brown hair, brown eyes.

Property: Effects at U. S. address and $1,573.40 in the New York Savings Bank, 83 8th Ave., New York City.

Foreign address to which deportable: Kathrakien-Karkyre (Corfu) Greece.

~~99149/291~~

At Ellis Island, N. Y. H., May 8, 1929

Alien, sworn by Inspector Hanney, testifies in Greek through Interpreter Christopher as follows:

Q. What is your correct name?

A. Constantinos Catethes.

Q. Have you ever been known by any other name?

A. Costas Catethes.

Q. What is your last address in the United States?

A. 321 W. 40th St., 5th floor, New York City.

[fol. 17] Q. Where are you employed?

A. As stevedore for the Cunard Steamship Co. on Pier 54 and 56.

Q. I show you, serve upon you, read and explain to you, Department warrant of arrest No. 55666/391, dated May 8, 1929, issued by the Assistant to the Secretary of Labor, charging that you have been found in the United States in violation of the Immigration Act of May 26, 1924, for the following among other reasons: that you have remained in the United States for a longer time than permitted under the said act or regulations made thereunder. The purpose of this hearing is to give you an opportunity to show cause, if any there be, why you should not be deported. Under the law, you are entitled to secure the services of counsel at your own expense, or you may be represented by some other person of your own choosing. Do you wish to be represented?

A. No, I don't want a lawyer.

Q. How old are you and when and where were you born.

A. 28, born in Mathrakion-Kefkyre (Corfu) Greece, in 1901. I don't remember the month.

Q. Are you married or single?

A. Married.

Q. What is your wife's maiden name and where was she born?

A. Her name is Anastasia Constantinou Catethes, born in the same town I was.

Q. When and where were you married?

A Married in the same place in January 1919.

Q. Have you any children?

A Three children

Q. Give their names and ages?

A. Spyros, 7 years old, George, 6 years old and Amelia, 5 years old.

Q. What nationality and race are you?

A. Greece-Greek.

Q. How long have you been a seaman?

A. Since I was 15 years old.

[fol. 18] Q. When and where did you last enter the United States as a seaman?

A. I arrived at the port of Boston, October 1, 1924. It was an Italian ship. I don't remember the name.

Q. What lines?

A. I don't remember the name of the company.

Q. In what capacity were you employed on this vessel?

A. Sailor.

Q. Were you discharged from this vessel or did you desert?

A. I deserted the ship.

Q. Have you continued to remain in the United States since your desertion in October 1924?

A. Yes.

Q. Never have been out?

A. No.

Q. At the time of your entry were you in possession of an unexpired immigration visa?

A. No.

Q. Have you a passport or any other documentary evidence of your nationality?

A. Yes. (Presents a Greek passport No. 899 issued to the alien at Corfu, Greece, December 4, 1924, and also bears a visa of the Consul-General of Greece in France— visa No. 273, dated December 11, 1924. Same is made part of the file.)

Q. Your passport shows that you had visa stamped at the Greek Consulate in France in December 1924, how do you account for this visa being on your passport and you stating that you entered the United States at Boston in October 1924?

A. I want to correct that. It was October 1925.

Q. What is the present address of your wife and children?

A. In the same town where I was born.

Q. What is the present address of your parents?

A. Both of them live in the same place.

Q. What is your father's name and where was he born?

A. His name is Spyridon, born in the same place.

[fol. 19] Q. What is your mother's maiden name and where was she born?

A. Amelia Marinou Kassimi, born also in the same place.

Q. Have you any relatives in the United States?

A. I have many cousins.

Q. Give me the name and address of one cousin?

A. Alexandros Kassimie, 427 W. 16th St., New York City.

Q. What church were you christened in?

A. St. Nicholas Greek Orthodox Church in my birthplace, which I also attended.

Q. What schools did you attend?

A. Graduated high school in my birthplace.

Q. Have you ever been arrested or imprisoned at any time?

A. No.

Q. Was the Immigration Service in Mobile, Ala., ever after you?

A. I was in Mobile, but came back from Mobile here.

Q. Was the Immigration Service looking for you?

A. No, they were looking for others but not for me.

Q. How do you know they were looking for others?

A. I heard say.

Q. Have you ever been an inmate of any hospital or institution?

A. No, sir.

Q. Have you any money in the bank or any due you anywhere?

A. Yes. (Present bankbook No. 332511 on the New York Savings Bank, 83 8th Ave., New York City, same having a balance of $1,573.40.)

Q. Where are your clothing and personal effects?

A. At my address.

Q. Have you anything to say why you should not be deported to the country of which you are a citizen?

A. I understood that after having been three years in the United States I am entitled to stay here.

[fol. 20] Q. If permission were given you to reship foreign one way in lieu of deportation would you accept this opportunity?

A. Yes.

Q. Pending disposition of your case by the Bureau are you able to furnish $500 bond for your release from custody?

A. Yes.

Case closed.

AEH:FBN.
D 5/8/29 T 5/9/29.

99149/291

Summary

Constantinos Catethes or Costas Catethes, 28, male, married, seaman, native and citizen of Greece, Greek race, arrived at the port of Boston, on or about October 1, 1925, as a seaman on an Italian vessel and deserted. Arrival not verified.

Hearing held at Ellis Island, N. Y. H. May 8, 1929, by Inspector A. E. Hanney, under Department warrant of arrest No. 55666/391 dated May 3, 1929, charge—"Remained Longer". Alien present in person, waived right to counsel or representation.

Warrant read and explained. No additional charge lodged.

This alien arrived in the United States as indicated in the first paragraph. From the alien's sworn testimony, it appears that he deserted his vessel in Boston, Mass., on or about October 1, 1925 and continued to remain in the [fol. 21] United States in violation of the immigration act of May 26, 1924, or regulations made thereunder. He was not in possession of an unexpired immigration visa at the time of his entry.

Alien was released under bond in the sum of $500, his address being 321 40th Street, 5th floor, New York City.

Alien is in possession of Greek passport #899, issued to him December 4, 1924. Same is attached to file. The assistance of the Bureau will be required.

The charge contained in the warrant having been sustained by the evidence, I recommend deportation of the alien at Government expense and that he be permitted to reship foreign one way in lieu of deportation.

A. E. Hanney, Immigrant Inspector.

AEH:AS.
T 5/13.

99149/291

United States of America, Department of Labor,
Washington

No. 55666/391

To Commissioner of Immigration, Ellis Island, N. Y. H., or to any officer or employee of the United — Immigration Service:

Whereas, from proofs submitted to W. N. Smelser, after due hearing before Immigrant Inspector A. E. Hanney, [fol. 22] held at Ellis Island, N. Y. H., the said W. H. Smelser has become satisfied that the alien, Constantinos or Costas Catethes, who landed at the port of Boston, Massachusetts, on or about the 15th day of October, 1925, has been found in the United States in violation of the immigration act of May 26, 1924, to wit: That he has remained in the United States for a longer time than permitted under the said act or regulations made thereunder, and may be deported in accordance therewith:

I, P. F. Snyder, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Greece, the country whence he came, at the expense of the appropriation "Expense of Regulating Immigration, 1929", including the expenses of an attendant, if necessary. Upon consent surety the alien may be permitted to depart voluntarily or ship foreign one way, without expense to the United States to any country of his choice, except foreign contiguous territory or adjacent

islands, such departure to be verified, and to be considered a satisfactory compliance with the terms of this warrant. Delivery of the alien and acceptance for deportation or proof of voluntary departure or shipment foreign will serve to cancel the outstanding appearance bond.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 11th day of June, 1929.

(S.) P. F. Snyder, Assistant to the Secretary of Labor.

[fol. 23] IN UNITED STATES DISTRICT COURT

M 12/336

UNITED STATES OF AMERICA ex Rel. KOSTAS CATECHES, Relator,

vs.

BENJAMIN M. DAY, Commissioner of Immigration, Port of New York, Respondent

ORDER DISMISSING WRIT—Sept. 17, 1929

The return to the above writ having duly come on to be heard before me on the 17th day of September, 1929, and after hearing Harold Van Riper, Esq., of counsel, for the relator, and Ernest Lappano, Assistant United States Attorney, for the respondent, and due deliberation having been had, it is hereby

Ordered that the said writ of habeas corpus be and the same hereby is dismissed, and that the relator, Kostas Cateches, be and he hereby is remanded to the custody of [fol. 24] the Commissioner of Immigration at the Port of New York.

Francis J. Caffey, U. S. D. J.

(Sig. can't decipher.)

Notice of settlement is hereby waived.

J. Waisman, Attorney for Relator.

Dated September 18, 1929.

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL

On reading the petition of Costas Cateches, made by his attorney, J. Waisman, dated September 18th, 1929, for appeal and consideration of the Assignment of Errors presented herewith, it is

Ordered that the appeal herein be allowed as prayed for and that pending its determination the said Costas Cateches shall be released from custody upon giving bail by bond or undertaking in the sum of $1,000.00, and it is

Further ordered that a certified copy of the record of all proceedings herein transmitted to the Circuit Court of Appeals for the Second Circuit.

Dated, New York, September 19th, 1929.

Francis G. Caffey, U. S. D. J.

9/18/29.

Approved as to form. Charles H. Tuttle, U. S. Atty. E. Lappano, Asst. U. S. Atty.

[fol. 26] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL

The petitioner, Costas Cateches, by his attorney, J. Waisman, feeling aggrieved by the Order and Judgment made on the 18th day of September, 1929, by this Court, dismissing the writ of habeas corpus herein, does hereby appeal from the Order and Judgment of this Court to the United States Circuit Court of Appeals for the Second Circuit and prays that this appeal may be allowed and that transcript of the record of the proceedings and papers upon which the said Order and decision was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated New York, September 19th, 1929.

J. Waisman, Attorney for Relator, One Broadway, New York.

To Charles H. Tuttle, U. S. Attorney for the Southern District of New York, Attorney for respondent-appellee.
Alex Gilchrist, Jr., Clerk of U. S. District Court, Southern District of New York.

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes the relator in the above-entitled cause and files the following Assignment of Errors upon which he will rely upon the prosecution of the appeal in the above-entitled cause from a decree made and entered herein by this Court on the 18th day of September, 1929.

The Court erred in dismissing the writ of habeas corpus, because:

Sections 3, 14 and 15 of the Immigration Act of 1924, and Paragraph 2, Subdivision 1, Rule 6, of Immigration Rules of March 1, 1927, relied upon by respondent, relate to the deportation of alien seamen permitted to land lawfully in the pursuit of their calling, who unlawfully remain for a longer period than so permitted thereunder, and are not applicable to cases as the instant case wherein the alien seamen's original entry was unlawful, which condition is specifically provided for by Section 34 of the Immigration Act of February 5, 1917, under which the Secretary of Labor is estopped from deporting alien seamen after the lapse of more than three years after their unlawful entry.

[fol. 28] Whereas by the Law of the Land, the said writ of habeas corpus should have been sustained, now the said Costas Cateches, by his attorney, J. Waisman, prays that for the errors aforesaid, and other errors in the record and proceedings, the judgment and decision aforesaid made on the 18th day of September, 1929, be set aside and for naught be held and esteemed, and that the writ of habeas corpus herein be sustained.

Dated September 19th, 1929.

J. Waisman, Attorney for Relator.

[fols. 29 & 30] Citation, in usual form, omitted in printing.

[fol. 31] In United States District Court

[Title omitted]

Stipulation as to Record

It is hereby stipulated and agreed that the foregoing is a true copy of the transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated February 5, 1930.

J. Waisman, Attorney for Relator. Charles H. Tuttle, U. S. Attorney, Attorney for Respondent.

[fol. 32] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 33] In United States Circuit Court of Appeals for the Second Circuit

United States of America ex Rel. Costas Cateches, Relator-Appellant,

against

Benjamin M. Day, United States Commissioner of Immigration, Respondent-Appellee

Before Manton, Swan, and A. N. Hand, Circuit Judges

Harold Van Riper, Esq., Counsel for Appellant.

Charles H. Tuttle, Esq., United States Attorney; George B. Schoonmaker, Esq., Asst. U. S. Attorney, of Counsel.

Per Curiam:

Order affirmed.

[fol. 34] IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

UNITED STATES ex Rel. COSTAS CATECHES, Relator-Appellant,

v.

BENJAMIN M. DAY, as Commissioner, etc., Respondent-Appellee

Appeal from the District Court of the United States for the Southern District of New York

JUDGMENT—Filed May 12, 1930

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 35] [File endorsement omitted.]

[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 37] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1930

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for hearing immediately following case No. 125, Walter E. Carr, Director of Immigration, etc., vs. Mateo Zaja.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 35,258. U. S. Circuit Court of Appeals, Second Circuit. Term No. 336. United States of America ex rel. Costas Cateches, petitioner, vs. Bejamin M. Day, Commissioner of Immigration. Petition for a writ of certiorari and exhibit thereto. Filed August 7, 1930. File No. 35,258.

FILE COPY

FILED
AUG 7 1930
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 336

UNITED STATES OF AMERICA ex REL. COSTAS CATECHES, PETITIONER,

vs.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

HAROLD VAN RIPER,
Attorney for Petitioner,
1 *Broadway, New York, N. Y.*

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 336

UNITED STATES OF AMERICA ex REL. COSTAS CATECHES, PETITIONER,

vs.

BENJ. M. DAY, U. S. COMMISSIONER OF IMMIGRATION, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Justices of the Supreme Court of the United States of America:

Petitioner herein, by his attorney, Harold Van Riper, respectfully shows:

The Writ of Habeas Corpus herein was dismissed without opinion by Hon. Francis J. Caffey, U. S. District Judge, Southern District of New York, on Sept. 17th, 1929 (R. 23).

On May 5th, 1930, the U. S. Circuit Court of Appeals, 2nd Circuit, without opinion, affirmed the Court below (R. 33), and has stayed its mandate.

Costas Cateches, a Greek seaman, was arrested on May 8th, 1929 (R. 46), under a warrant of arrest issued by the Secretary of Labor on May 3, 1929, containing the sole charge, presumably under Sec. 14 of the Immigration Act of May 26, 1924 (8 U. S. C. A. 214), that

> "He has remained in the United States for a longer time than permitted under the said Act of Regulations made thereunder" (R. 39),

and, at the conclusion of the hearings accorded the alien under said warrant the immigration authorities made a finding of fact to the effect that the alien had deserted his vessel in Boston, Mass., on or about Oct. 1, 1925 (R. 60), more than three years prior to his said arrest; wherefore, on June 11, 1929, a warrant issued for his deportation to Greece (R. 63).

Said decision of the Circuit Court of Appeals, Second Circuit, sought to be reviewed, in effect sustains the contention of the administrative branch of the government that Section 14 of the Immigration Act of May 26, 1924 (8 U. S. C. A. 214), applies not only to alien seamen regularly admitted under Sec. 3-(5) of said act (8 U. S. C. A. 203) for the purpose of reshipping foreign, as provided for in Sec. 33 of the Act of Feb. 5, 1917 (8 U. S. C. A. 168), and who remain for a longer time than the sixty day period permitted by regulation, but as well to alien seamen who desert their vessels without being regularly admitted and whose cases pe-

titioner respectfully submits fall solely within the provisions of Sec. 34 of the Act of 1917 (8 U. S. C. A. 166), which prohibits their arrest and deportation more than three years after their illegal entry.

The question involved herein is an important one because similar cases are constantly arising in the various circuits and said decision is in conflict with two decisions of the Circuit Court of Appeals for the Ninth Circuit, Nagle *vs.* Hansen, 17 F. (2d) 557, and *Ex Parte Bildt*, 32 F. (2d) 894, the first of which decisions has been frequently cited as an authority.

Single Question Presented.

The instant case involves only one question of law: Are seamen who desert their vessels without being regularly temporarily admitted under Sec. 3-(5) of the Immigration Act of May 26, 1924 (8 U. S. C. A. 203), for the purpose of reshipping foreign on another vessel within sixty days after such admission as provided by Sec. 33 of the Immigration Act of February 5, 1917 (8 U. S. C. A. 168), and who remain unlawfully in the United States for more than three years, subject to deportation at any time under Sec. 14 of the Immigration Act of May 26, 1924 (8 U. S. C. A. 214), which by its terms applies only to seamen regularly temporarily admitted and who remain beyond said sixty-day period; or is their deportation barred by the three-year limitation fixed by section 34 of the Immigration Act of February 5, 1917 (8 U. S. C. A. 166), which section applies solely to aliens whose *landing* is unlawful?

Reasons for the Petition.

The reasons for which the petition is presented are:

(1) That the Circuit Court of Appeals has decided an important question of Federal law, which has not been, but should be, settled by this Court (Rule 35).

(2) That the Circuit Court of Appeals for the Second Circuit has rendered a decision in conflict with decisions of the Circuit Court of Appeals for the Ninth Circuit on a similar question, namely, U. S. *ex rel.* Nagle *v.* Hansen, 17 F. (2d) 557, and *Ex Parte* Bildt, 32 F. (2d) 894.

Wherefore petitioner respectfully prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Second Circuit, and submits his brief hereto attached in support of this petition.

Respectfully submitted,

HAROLD VAN RIPER,
Attorney for Petitioner,
1 *Broadway, New York, N. Y.*

United States of America,
State and Southern District of New York, ss:

Harold Van Riper, being duly sworn, says that he is a member of the bar of the Supreme Court of the United States, is the attorney for the petitioner herein, and is duly authorized by said petitioner to make and execute this petition on his behalf; that he had read the foregoing petition and knows the contents thereof,

and that the matters therein stated are true to the best of his knowledge, information, and belief. Deponent certifies that he has examined the foregoing petition and the record herein, and that in his opinion it is well founded, meritorious, and entitled to the favorable consideration of this Court.

HAROLD VAN RIPER.

Sworn to before me this 5th day of August, 1930.

[SEAL.] ALBERT E. ARDITTI,
Notary Public, New York County.

New York Co. Clerk's No. 213, Register's No. 1A280.
Commission expires March 30, 1931.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 336

UNITED STATES OF AMERICA ex REL. COSTAS CATECHES, PETITIONER,

vs.

BENJ. M. DAY, U. S. COMMISSIONER OF IMMIGRATION, RESPONDENT.

BRIEF IN SUPPORT OF THE FOREGOING PETITION.

The question herein raised is identically the same as that presented in the case of Philippides *vs.* Day, in which this Honorable Court recently granted a writ of certiorari, and it is respectfully prayed that a writ of certiorari be granted herein.

HAROLD VAN RIPER,
Attorney for Petitioner,
1 *Broadway, New York, N. Y.*

FILE COPY

JAN 26 1931

Supreme Court of the United States.

OCTOBER TERM, 1930

No. 336

UNITED STATES OF AMERICA, *ex rel.* COSTAS CATECHES,

Petitioner,

vs.

BENJ. M. DAY, U. S. Commissioner of Immigration,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONER.

HAROLD VAN RIPER,
Counsel for Petitioner.

THE BALLOU PRESS NEW YORK

Supreme Court of the United States.

October Term, 1930.

UNITED STATES OF AMERICA, *ex rel.*, COSTAS CATECHES, Petitioner, vs. BENJ. M. DAY, U. S. Commissioner of Immigration, Respondent.	No. 336.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONER.

Opinion Below.

Neither the Court below nor the District Court rendered an opinion herein.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on February 17, 1930 (R. 19). The petition for certiorari was filed in this Court on August 7, 1930 (R. 20) and certiorari was granted October 13, 1930 (R. 19). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Single Question Presented.

The instant case involves only one question of law:

Are seamen who desert their vessels without being regularly temporarily admitted under Section 3 (5) of the Immigration Act of May 26, 1924 (8 U. S. C. A. 303), for the purpose of reshipping foreign on another vessel within sixty days after such admission as provided by Section 33 of the Immigration Act of February 5, 1917 (8 U. S. C. A. 168), and who remain unlawfully in the United States for more than three years, subject to deportation at any time under Section 14 of the Immigration Act of May 26, 1924 (8 U. S. C. A. 214), which by its terms applies only to seamen regularly temporarily admitted and who remain beyond said sixty-day period; or is their deportation barred by the three-year limitation fixed by Section 34 of the Immigration Act of February 5, 1917 (8 U. S. C., 166), which section applies solely to aliens whose *landing* is unlawful?

Statutes and Regulations Involved.

The statutes and regulations involved are quoted from time to time as reference is made thereto.

Statement.

Costas Cateches, a Greek seaman, deserted his ship at Boston in October, 1925 (R. 11-13).

On May 3, 1929, more than three years thereafter, a warrant for his arrest was issued by the Assistant to the Secretary of Labor, under the act of May 26, 1924, containing the sole charge that

> "He has remained in the United States for a longer time than permitted under the said act or regulations made thereunder;" (R. 8),

and on May 8, 1929, he was taken into custody (R. 9).

He was accorded a hearing on May 8, 1929 (R. 9-14) no additional charges were preferred against him and on June 11, 1929, a warrant issued for his deportation on the same ground (R. 14).

On September 9, 1929, a writ of habeas corpus issued (R. 2) and on September 17, 1929, it was dismissed without opinion by Hon. Francis G. Caffey, *D. J.* (R. 15).

An appeal to the Circuit Court of Appeals, Second Circuit, was allowed on September 19, ~~1930~~ 1929 (R. 16), which, on May 12, 1930, without opinion, affirmed the court below (R. 19).

Specification of Errors to Be Urged.

1. The court erred in affirming the order of the trial court.

2. The court erred in holding that the three-year statute of limitation as provided in Section 34 of the Immigration Act of 1917 did not prevent the deportation of petitioner.

3. The court erred in holding that the petitioner could be deported as provided by Section 14 of the Immigration Act of 1924, without regard to the time of his entry.

Summary of Argument.

The deportation of the petitioner was not authorized by Section 14 of the Immigration Act of 1924. That section provides that "any alien who at any time after entering the United States is found * * * to have remained therein for a longer time than permitted under this act or regulations made thereunder, shall be taken into custody and deported * * *", because he was not "permitted" or "admitted" to enter temporarily under Sections 3 (5) and 15 of the 1924 Act for the purpose of reshipping foreign under Section 33 of the 1917 Act or for hospitalization under Section 19 of the 1924 Act. He simply deserted his ship in violation of

said Section 33 of the 1917 Act. Therefore, petitioner has not remained in this country for a longer time than that allowed by law or regulations lawfully issued under Section 15 of the Immigration Act of 1924, because any regulations promulgated under Sections 15 and 19 of the 1924 Act are null and void insofar as they conflict with Section 33 of the 1917 Act.

Section 34 of the Immigration Act of 1917 is applicable to the petitioner, and by its express terms relates to seamen "who shall land * * * contrary to the provisions of this Act". Petitioner's entry was contrary to Section 33 of the 1917 Act, and Section 34 of that Act controls. The mere fact that the deportation proceedings were brought under the express terms of Section 14 of the 1924 Act relating to alien seamen who remain in the United States for a longer time than permitted by regulations issued under that Act, is not material if in fact the proceeding should have been brought under Section 34 of the 1917 Act.

Section 14 of the 1924 Act clearly relates to alien seamen regularly temporarily admitted under Section 33 of the 1917 Act, as well as to other aliens, and the various circuits seem to be in accord on this proposition. Such alien seamen are expressly included in Section 15 of the 1924 Act as being among those concerning whom the Secretary of Labor may make regulations governing the length of their stay in the United States, and Section 19 refers solely thereto and to seamen admitted for hospitalization. Neither section applies to alien seamen who, like the petitioner, landed contrary to the provisions of Section 33 of the 1917 Act.

The legislative history supports this construction. Furthermore, this construction would leave the Department of Labor with means of deporting temporarily admitted alien seamen who remain in this country longer than is allowed by the regulations, and gives full force and effect to both Section 34 of the 1917 Act and Section 14 of the 1924 Act.

Argument.

Prior to the rendition by the Circuit Court of Appeals, Second Circuit, on March 5, 1928, of its decision in *U. S. ex rel. Rios* v. *Day*, 24 F. (2d) 654, the various circuits apparently were in accord on two propositions with respect to the deportation of seamen who unlawfully had entered the United States; (1) that if a seaman's unlawful entry had taken place more than three years prior to his having been taken into custody in deportation proceedings, the mere fact that he had shipped at an American port for a round trip as a member of the crew of an American vessel did not break the continuity of the period between the entry and the arrest;

Weedin v. *Banzo Okada* (C. C. A., 9th Cir.), 2 Fed. (2d), 321;
Matter of Hersvik, 1 Fed. (2d), 449;
Chinese Cabin Waiter, 13 Fed., 286;
Chinese Laborers on Shipboard, 13 Fed., 291;
Ex Parte T. Nagata, 11 Fed. (2d), 178 (D. C., S. D. Cal.);
Nagle v. *Hansen*, 17 Fed. (2d), 557;
Kirk v. *U. S. ex rel. Lawrenson*, C. C. A. 5, 24 Fed. (2d), 64.

and (2), that seamen who had entered the United States unlawfully could not be taken into custody in deportation proceedings more than three years after the date of the unlawful entry because of Section 34 of the 1917 Act (8 U. S. C. 166).

However, on December 6, 1926, fifteen months prior to its Rios decision, the Circuit Court of Appeals, Second Circuit, decided the case of *U. S. ex rel. Claussen* v. *Curran*, 16 Fed. (2d) 15, which was a case wherein a seaman had entered unlawfully in 1912, never had been absent from the United States except as a member of the crews of American vessels for round trips from American ports back to American

ports, and whose last foreign voyage as a member of the crew of an American vessel terminated at Boston on March 26, 1918. A little more than three years thereafter he pleaded guilty in Maine to the crime of manslaughter, and was sentenced to more than one year's imprisonment. At the end of his imprisonment the Secretary of Labor sought to deport him under Section 19 of the Immigration Act of 1917 (8 U. S. C. 155) on the ground that he had been sentenced to imprisonment for more than a year within five years after his entry into the United States. A writ of *habeas corpus* was sued out on the ground that Claussen's original unlawful entry had taken place in 1912, that his round trips as a member of the crews of American vessels had not broken the continuity of the period, that more than five years had elapsed between his entry and the date of his sentence in 1921, and that, therefore, his deportation was barred by the five-year limitation fixed by said Section 19 of the 1917 Act, and not by the three-year limitation fixed by Section 34 thereof. In this decision the Circuit Court said:

> "* * * The exact question is whether his return on the American schooner from the foreign cruise for which he had shipped from the United States is to be deemed an entry into the United States, within the above-quoted Section 19 of the Act. The common statement which was the basis for the decisions in the Chinese Laborer (C. C.), 13 F. 291, and Chinese Cabin Waiter (C. C.), 13 F. 286, that an American vessel is to be deemed American soil, is but a fiction, and is not of universal application. *Scharrenberg* v. *Dollar S. S. Co.*, 245 U. S. 122, 38 S. Ct. 28, 62 L. Ed. 189; *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306.
>
> Clearly he was not in the United States during the voyage; equally clearly he entered the United States in March, 1918. The question before us is neither, as in *Weedin* v. *Banzo Okada* (C. C. A.), 2 F. (2d) 321, whether within other sections of the Act that entry was legal or illegal, nor, as in petition of Hersvik (D. C.), 1 F. (2d) 449, whether by making such a voyage he lost

any rights given under other sections of the Act to return to the United States. See, too, *ex parte T. Nagata* (D. C.) 11 F. (2d) 178.

We are concerned only with the meaning of the word in connection with the deportation provision for the commission of crime, and under that section, in our judgment, the word should be given the broadest interpretation. * * *" (Italics ours).

Judge Learned Hand dissented. Thereafter a Writ of Certiorari was granted and in its decision this Honorable Court said:

"The question for decision is whether petitioner was sentenced within five years after his entry into the United States. * * * It is immaterial whether he was entitled to admission or whether he lawfully entered. The cause for which his deportation was ordered arose after entry." (Italics ours.)

From all of the foregoing it clearly is to be seen that the question as to whether or not Section 34 barred the deportation of a seaman more than three years after an illegal entry, was not before the courts in the *Claussen* case.

In the *Rios* case, however, the sole question before the Court was as to whether or not the period of limitation should run from the date of his unlawful entry in 1918, or from the date of his discharge on September 25th, 1925, upon the completion of a round trip on an American vessel from an American port back to an American port. The Court said:

"While, under section 34 of the Immigration Act of 1917, deportation of an alien seaman could not be effective unless some independent ground for deportation existed (U. S. ex rel. Gioia v. Curran (D. C.) 11 F. (2d) 904; In re Lackides (D. C.) 10 F. (2d) 980), under section 14 of the act of 1924, deportation may be effected because of the fact that the seaman remained here longer than the temporary period allowed. This appellant abandoned his calling as a seaman, which alone gave him the right to stay for a temporary period

only. If he remained longer, by virtue of section 19, he was subject to deportation. His last entry in September 1925, controls *the limitation as to when he may be deported.* U. S. ex rel. Claussen v. Curran (C. C. A.) 16 F. (2d) 15. His other entries are unimportant." (Italics ours.)

In other words, it held that his last entry into the United States, whether legal or illegal, was at the termination of his round trip voyage on an American vessel on September 25, 1925, and that as he had been taken into custody within three years thereafter, he was deportable. Such holding, *except in so far as it recognized the existence of a limitation,* was directly contrary to all of the prior decisions above mentioned, and the question of the three-year limitation fixed by Section 34 of the 1917 Act was not involved. The premise that he was admitted under Section 19 of the 1924 Act is, we believe, without foundation, for the reasons hereinafter set forth.

Thereafter the Circuit Court of Appeals for the Second Circuit decided *Piccolella* v. *Commissioner,* 36 F. (2d) 1022, which covered a seaman who was arrested more than three years after desertion of his ship and cited *Rios* v. *Day, supra,* as authority for the proposition that a seaman who had entered unlawfully subsequent to July 1, 1924, could be deported at any time under Section 14 of the Act of 1924, notwithstanding the limitation of time fixed by Section 34 of the 1917 Act. Subsequently, on the authority of its decision in the *Piccolella* case, it decided *Philippides* v. *Day,* 37 F. (2d) 1015, and the case at bar, both being cases in which the arrests took place more than three years after the entries, and the Fifth Circuit, in *Zubrick* v. *Traicoff,* March 14, 1930, 38 F. (2d) 811, also cited the *Rios* case as authority for the same proposition. That the *Rios* case has no application to the question at issue is manifest from a reading of same.

On May 27, 1929, the Ninth Circuit, in *Ex Parte Bildt,* 32 F. (2d.) 894, carefully distinguished its decision in *Nagle* v. *Hansen,* by pointing out that Bildt had been regularly admit-

ted, after inspection, for a period of sixty days, to reship foreign, and, therefore, properly was deportable under Section 14 of the 1924 Act (8 U. S. C. 214) for remaining longer than permitted to. It said:

> "The language of the 1917 act is 'that any alien seaman who shall land in a port of the United States contrary to the provisions of this act shall be deemed to be unlawfully in the United States and at any time within three years thereafter upon the warrant of the Secretary of Labor be taken into custody, etc. *The difficulty of the application arises out of the fact that the initial 'landing' of the applicant was not unlawful but pursuant to permission duly given by the immigration officials. His 'landing' became unlawful only upon the termination of that period (60 days).*"

and the United States District Court for Maryland, June 14, 1929, follows this reasoning in *U. S. ex rel. Bardakos* v. *Mudd,* 33 F. (2d.) 334, and says:

> "Parenthetically, it may be pointed out that even if it be assumed that section 34 of the 1917 act (8 U. S. C. A. 166) applies to the present case as contended by petitioners (which cannot, as a matter of fact, be applicable because it relates only to alien seamen who enter into, not to those who remain in the United States, unlawfully), the three-year period therein prescribed for deportation has not expired."

Finally, on February 17, 1930, the Ninth Circuit in *Carr* vs. *Zaja,* 37 F. (2d.) 1016, again held in accord with its former decision in *Nagle* vs. *Hansen, supra,* in the following language:

> "In the facts material to the application of the statute of limitations the case does not differ from Nagle v. Hansen, decided by this court in February, 1927, 17 F. (2d) 557. Upon a re-examination of the Acts of 1917 and 1924, therein referred to, we adhere to the conclusion there reached. Appellant cites with apparent confidence United States ex rel. Rios v. Day (C. C. A.) 24 F. (2d) 654, but in that case the statute of limitations

was not involved, and it is not clear that in any respect it is to be deemed out of harmony with Nagle v. Hansen."

It would therefore appear that all of the circuits are in accord on the proposition that the cases of alien seamen unlawfully in the United States fall into two general classes; (1) alien seamen whose landing, irrespective of the date thereof, was unlawful, and whose cases, therefore, are covered by Section 34 of the 1917 Act (8 U. S. C. 166); and, (2) alien seamen who have entered the United States since July 1, 1924 pursuant to permission given by the immigration authorities and whose cases fall under Section 14 of the 1924 Act (8 U. S. C. 214), wherefore it becomes necessary to determine what constitutes an unlawful landing under the immigration laws.

Prior to the enactment of the Immigration Act of 1924 the admission and landing of alien seamen were covered by Sections 32 and 33 of the 1917 Act, Section 32 was repealed by Section 20 (d) of the Act of 1924, and Section 33 appears in the Code as Section 168 of Title 8. Said Section 32 read in part as follows:

> "That no alien excluded from admission into the United States by any law, convention, or treaty of the United States regulating the immigration of aliens and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States * * *."

This portion of the said repealed section was reenacted almost verbatim as Section 19 of the 1924 Act (8 U. S. C. 166), reading as follows:

> "Sec. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted

to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States" (8 U. S. C. A. 166).

The remainder of Section 32 had to do with the imposition against and collection from the owners, agents, consignees or masters of vessels of fines for failure to detain alien seamen for immigration inspection, and it was for the purpose of strengthening the same that it was repealed and Section 20 of the 1924 Act (8 U. S. C. 167) was enacted.

In other words, while Sections 19 and 20 are parts of the 1924 act, they really are only strengthening amendments to Section 32 of the 1917 act, and properly are not parts of the 1924 act at all.

Section 33 of the 1917 Act restricted entries under Section 32 thereof, and now restricts entries under Section 19 of the 1924 Act. It reads as follows:

> SEC. 33. *That it shall be unlawful and be deemed a violation of the preceding section* to pay off or discharge any alien employed on board any vessel arriving in the United States from any foreign port or place, unless duly admitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: Provided, That in case any such alien intends to reship on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admissible under any law, convention, or treaty from remaining permanently in the United States, *and may be paid off, discharged, and permitted to remove his effects, anything in such laws or treaties or in this act to the contrary notwithstanding, provided due notice of such proposed action be given by the master or the seaman himself to the principal immigration officer in charge at the port of arrival* (8 U. S. C. A. 168). (Italics ours.)

Under this section, aside from entry for medical treatment as provided for by Section 19 of the 1924 Act, an alien sea-

man can enter the United States lawfully only after the giving of "due notice" to the immigration authorities of intention to reship foreign, and *inspection* and *admission* by them as a *discharged, paidoff* seaman who intends to reship foreign within the sixty-day period fixed by the regulations of the Secretary of Labor. The Secretary of Labor, therefore, lawfully could not promulgate any regulations permitting landing and separation from the vessel for any other purpose, and if he has done so, such regulations are null and void.

To keep effective Section 33 and solely to make possible the temporary admission necessary to permit entry thereunder after the passage of the 1924 act, Congress enacted Section 3 (5), thereof, which reads as follows:

> "SEC. 3. When used in this act the term 'immigrant' means any alien departing from any place outside the United States destined for the United States, except * * * (5) a bonafide seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman * * *" (8 U. S. C. A. 203).

and Section 15 thereof, which reads as follows:

> "SEC. 15. The *admission* to the United States of an alien excepted from the class of immigrants by clause 5 * * * of Section 3 * * * shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed * * * to insure that, at the expiration of such time or upon failure to maintain the status onder which *admitted*, he will depart from the United States" (8 U. S. C. A. 215).

Similar views as to the application of Section 33 of the 1917 Act and Sections 3, 15 and 19 of the 1924 Act evidently were held by the Court below in *U. S. ex rel. D'Istria* v. *Day*, June 6, 1927, 20 F. (2d) 302, in which it was said:

> "(2) Section 33 of the Act of 1917 (Comp. St. 4289 ¼ rr) makes it unlawful to discharge a seaman in the

United States, unless he intends to reship on another vessel bound to a foreign port, and then only in conformity with such regulations as the Secretary of Labor may promulgate. This section survives and is consistent with the Quota Act of 1924, Section 3 (5), being Comp. St. 4289 ¾ aa, which exempts from the quota seamen seeking to enter temporarily in pursuit of their calling. Section 19 of the Quota Act (Comp. St. 4289 ¾ ii) forbids any seaman 'excluded from admission' to land except as allowed by the regulations. We read it as meaning that an alien seaman discharged in the United States is 'excluded from admission' by Section 33 of the Act of 1917, unless he intends to reship and satisfies the regulations passed to ascertain that intention. Possibly Section 19 is redundant, but like Section 3 (5) it is consistent with Section 33 of the Act of 1917. * * *"

Section 34 prescribes the procedure and time within which deportation may be effected of seamen who enter in any manner other than for hospital treatment under Section 32 of the 1917 Act (now Section 19 of the 1924 Act), or for reshipment foreign under Section 33 of the 1917 Act, and reads as follows:

"SEC. 34. That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, *at any time within three years thereafter,* upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in Section 20 of this Act" (8 U. S. C. A. 166).

Section 34 is not rendered inoperative by Section 14 of the 1924 Act, which in so far as it is applicable to the charge in the case at bar, reads as follows:

"SEC. 14. Any alien who at any time after entering the United States is found * * * to have remained therein for a longer time than permitted under this Act

> or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in Sections 19 and 20 of the Immigration Act of 1917; * * *" (8 U. S. C. A. 214).

and this position is tenable in view of the fact that in considering this whole seamen question at the time of the passage of the 1924 Act, Congress very carefully reviewed Sections 31-36, inclusive, of the 1917 Act, only repealed Section 32 thereof by Section 20 (d) of said 1924 Act, and left effective Sections 31, 33, 34, 35 and 36. Compare *Nagle* v. *Hansen,* 17 F. (2d) 557, at 558, *ex parte Bildt,* 32 F. (2d) 894 and *Carr* v. *Zaja,* 37 F. (2d) 1016.

There is nothing anywhere in the record that indicates that this alien seaman landed in either of the two ways prescribed by law, his landing, therefore, was unlawful, his case falls squarely within Section 34 of the Act of 1917, and he was and is not deportable.

Wherefore, it is respectfully prayed that the decisions, mandates and orders below be set aside and for naught held and esteemed.

HAROLD VAN RIPER,
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No. 336

In the Supreme Court of the United States

OCTOBER TERM, 1930

UNITED STATES OF AMERICA EX REL. COSTAS CATECHES, PETITIONER

v.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION AT THE PORT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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UNITED STATES OF AMERICA EX REL. COSTAS CATECHES, petitioner

v.

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MEMORANDUM FOR THE RESPONDENT

The question involved is whether an alien who arrived in this country, after the effective date of the Immigration Act of 1924, as a seaman and deserted his ship, and remained here for a longer period than permitted by that Act and the regulations of the Department thereunder, may be deported at any time as provided in said Act, or only within three years after entry in accordance with the Immigration Act of 1917.

This precise question is involved in *Philippides* v. *Day, Commissioner,* No. 92, present term, in

which this Court at the last term, without opposition by respondent, granted the petition for certiorari. The question is also involved in *Carr, Director of Immigration* v. *Mateo Zaja,* No. 125, present term, in which petition for certiorari was filed on behalf of the Director on May 16, 1930, and is now pending before this Court. The respondent consequently does not oppose the granting of the petition in the instant case.

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SUPREME COURT OF THE UNITED STATES.

No. 336.—October Term, 1930.

United States of America *ex rel.* Costas Cateches,
vs.
Benjamin M. Day, Commissioner of Immigration.

[March 23, 1931.]

Mr. Justice Holmes delivered the opinion of the Court.

This case also arose in the Second Circuit, upon facts similar to those in No. 92, *supra*. The petitioner arrived in this country in October, 1925, upon an Italian ship, deserted at once and since has been engaged in land employment. He was arrested May 8, 1929, and after hearing was ordered to be deported on the same ground as the petitioner in No. 92. A writ of habeas corpus was applied for alleging that the arrest was not made within three years from the date of entry. The writ was dismissed by the District Court and the order was affirmed by the Circuit Court of Appeals. A writ of certiorari was granted by this Court.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.